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CIV **A 19 CV 0069** LY

Defendant.

TO THE HONORABLE JUDGE OF SAID COURT:

Doug O’Connell brings this action on behalf of his client Colonel (Retired) Daryl Callahan, against the United States Army Crime Records Center to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). As grounds therefore, Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

PARTIES

3. Doug O'Connell is a licensed attorney located in Austin, Texas. Colonel (Retired) Daryl Callahan is a physician and honorably retired Army National Guard

Officer. Colonel (Retired) Callahan resides in Kansas. All FOIA requests giving rise to this complaint originated in Austin, Texas on behalf of Colonel (Retired) Callahan.

4. Defendant Chester B. Longcor is the Director of the United States Army's Crime Records Center (USACRC). The USACRC is an agency of the United States Government located at 27130 Telegraph Road, Quantico, Virginia 22134. USACRC maintains the records of the United States Army Criminal Investigation Command (CID).

FACTS

5. Army CID investigated Colonel (Retired) Callahan regarding his participation in the now-defunct Guard Recruiting Assistant Program (G-RAP). G-RAP, simplified was a recruiting program for the National Guard administered and managed by a private defense contractor named Document and Packaging Brokers, Inc, commonly referred to as DOCUPAK. No criminal charges were ever filed against Colonel Callahan.

6. On September 5, 2018 Colonel (Retired) Callahan, by and through his attorney, submitted a FOIA request to the Defendant seeking copies of all records, reports, documents or correspondence that referencing Daryl J. Callahan. Plaintiff's FOIA request further asked for all DOCUPAK records in the possession of Army CID related to Daryl J. Callahan.

7. By letter dated September 14, 2018, the Defendant acknowledge receiving the FOIA request on September 6, 2018. The letter showed that the Defendant assigned case number FA 18-4265 to Plaintiff's FOIA request.

8. In the same response letter, the Defendant provided a copy of Law Enforcement Report (LER) 00397-2012-CID025-95721-8L. The LER lists several attachments to the report identified as exhibits. In the response letter, the Defendant stated:

“Please be advised, we are coordinating with our field office to attain copies of Exhibits 2 and 4. Once we receive copies of the Exhibits, a release determination will be made and provided to you in writing.”

9. LER 00397-2012-CID025-95721-8L identifies exhibit 2 as: “CD Containing DOCUPAK overview of COL Darryl Callahan.”

10. Plaintiff is aware from sworn testimony in unrelated cases, that the US Army CID is in possession of all DOCUPAK records related to G-RAP. The records are maintained at the U.S. Army CID headquarters in Quantico, Virginia.

11. On September 25, 2018, the USACRC Staff Judge Advocate (counsel for the Defendant) confirmed via email to the undersigned that the U.S. Army CID had possession of the DOCUPAK records at their headquarters in Quantico, Virginia.

12. As of the date of this complaint, Defendant has failed to produce the requested records, or otherwise demonstrate the records are exempt from production. Further Defendant has never advised Plaintiff of right to appeal any adverse determination.

13. Because Defendant has failed to comply with the time limit set forth in 5 U.S.C. § 522(a)(6)(A), Plaintiff is deemed to have exhausted any and all administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C).

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully request the Court take the following actions:

1. Order the Defendant to immediately search for and produce by a date certain all records, including DOCUPAK records not previously provided to the Plaintiff.
2. Grant Plaintiff an award of attorney’s fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 522(a)(4)(E).
3. Grant Plaintiff other relief the Court deems just and proper.

Respectfully submitted,


/s/ Douglas K. O'Connell

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